



Proposed Regulation Agency Background Document

The agency background document for 18VAC90-30 follows on the same document.

Agency name	Board of Nursing, Department of Health Professions
Virginia Administrative Code (VAC) citation	18 VAC 90-20 and 18 VAC 90-30
Regulation title	Regulations Governing the Practice of Nursing
Action title	Inactive licensure
Document preparation date	5/17/06

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

Proposed regulations were adopted by the Board of Nursing in response to a petition for rule-making, the Board of Nursing voted on May 17, 2006 to propose amendments to Chapter 20, Regulations Governing the Practice of Nursing that would allow a nurse with a current, unrestricted license to take an inactive status. Regulations set forth the process for obtaining an inactive license, the restriction on practice, and the requirements for reactivation to active status.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Nursing the authority to promulgate regulations to administer the regulatory system and to issue inactive licenses:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification, licensure or the issuance of a multistate licensure privilege in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify, license or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification, licensure, and the issuance of a multistate licensure privilege.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure or the issuance of a multistate licensure privilege and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title.*
- 7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate, license or multistate licensure privilege which such board has authority to issue for causes enumerated in applicable law and regulations. ...*
- 12. To issue inactive licenses or certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of licenses or certificates.*

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

Amendments are proposed in Section 30, which sets out the fee schedule for inactive licensure of nurses, and a new Section 225 which establishes the process for becoming inactive and the

requirements for reactivation. To ensure that nurses with inactive licenses understand that they are not authorized to practice, even as a volunteer, the Board has added a rule to specify that holding an inactive license does not entitle an individual to practice nursing in Virginia or under a multistate licensure privilege in another state.

The Board also set the qualifications and criteria for reactivation as necessary to protect the health, safety and welfare of the public. Continuing education is not required for renewal of an active license, since it is presumed that the nurse is engaged in active practice and is therefore maintaining her knowledge and skills. However, to ensure that an inactive nurse is competent and ready to resume safe practice, the Board will require some evidence of continued competency, consisting of evidence of completion of 15 hours of continuing education in nursing approved by a regionally accredited educational institution or professional nursing organization or of passage of National Council Licensing Examination or active practice in another jurisdiction during the period in which the license has been inactive.

In addition, the Board reserves the right to deny a request for reactivation to any licensee who has been determined to have committed an act in violation of §54.1-3007 of the Code of Virginia or any provision of this chapter. Such a provision protects the public because it will ensure that a nurse who has been disciplined in another jurisdiction or who has been found guilty of a violation that would be grounds for discipline in Virginia could be denied licensure.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

Amendments to Chapter 20, Regulations Governing the Practice of Nursing will allow a registered nurse or licensed practical nurse with a current, unrestricted license to take an inactive status. Regulations set forth the fee for renewal of an inactive license, the process for obtaining an inactive license, the restriction on practice, and the requirements for reactivation to active status, which include submission of an application and fee and evidence of competency to resume practice.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

- 1) There are no advantages or disadvantages to the public. Nurses who would request inactive licensure would not actively practicing in any setting, so their inactive status would not remove them from the workforce.
- 2) There are no advantages or disadvantages to the agency or the Commonwealth. Experience with other boards has shown that a certain percentage of licensees will request inactive status, which results in reduced revenue, but others who may have allowed a license to lapse will choose to maintain an inactive license, resulting in a net revenue gain.
- 3) There is no other pertinent matter of interest related to this action.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending notice of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled. The additional costs to the agency for implementing inactive licensure would include cost for Data to reconfigure systems and set up a new license type under the Board. Those costs are estimated to be \$2,900.</p> <p>The effect on revenue of the Board of Nursing is unknown but can be estimated based on figures from the inactive licensure for doctors of medicine and surgery:</p> <p>Total No. of doctors of medicine & surgery = 29877 % of those with out-of-state addresses that hold inactive licenses = 18.4% % of those with Virginia addresses that hold inactive licenses = 2%</p> <p>If those percentages are applied to the number of LPN's and RN's with in-state and out-of-state addresses, it could be estimated that 805 LPN's and 3026 RN's would become inactive for a total loss of revenue of \$86,198 per year. If that amount was applied to the \$6,461,320 in revenue for the 04-05 fiscal year, it would represent a 1.3% loss in revenue. That would likely be offset to some extent</p>
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	by revenue gained by inactive licensure from some nurses who are retired and would have chosen to allow their licenses to lapse completely.
Projected cost of the regulation on localities	None
Description of the individuals, businesses or other entities likely to be affected by the regulation	The individuals that will be affected by this regulation are nurses (RN's and LPN's) who are retired and no longer practicing but want to retain their Virginia nursing license.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There is no estimate of the number of entities that will be affected because the Board does not know how many nurses with current, active licenses are may choose to become inactive. While the biennial, inactive renewal fee would be \$45 less than the biennial, active renewal fee, the reduced fee would not be an incentive for some nurses who may want to retain an active license in case they wanted to work part-time or volunteer in a free clinic or community health project. Among the doctors of medicine licensed and residing in Virginia, approximately 2% hold an inactive license. The percentage of nurses who become inactive may be similar. There are no small businesses affected.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	There are no projected costs of the regulation. For those who want to be inactive and no longer qualified for practice, there would be a modest cost savings to retain a license.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

There are no alternatives other than regulatory action to address the issue of inactive licenses as requested by the nurse who petitioned for an amendment to regulations. In the petition for rule-making, it was noted that many retired nurses do not need to maintain an active license but are reluctant to give up the nursing license that they have held all of their adult lives. However, as the renewal fee has increased, many of these nurses question the need to continue paying for an active license and choose not to renew. While the Board will realize less revenue from inactive licenses than active licenses, it may offset the loss by the number of nurses who would choose an inactive license versus non-renewal.

The Board has also considered the implications of an inactive license as it relates to the Nurse Licensure Compact and issuance of a multistate licensure privilege. Since the Board has the authority to issue a single state license, the issuance of a single state *inactive* license should not

be problematic, but language was added to clarify that an inactive license does not entitle the holder to practice nursing in Virginia *or* to practice with a multistate licensure privilege.

The Board looked at inactive regulations for other boards at the Department and voted to include a provision similar to the one in the Board of Medicine regulations which stated that the Board reserves the right to deny a request for reactivation to any licensee who has been determined to have committed an act in violation of §54.1-3007 of the Code of Virginia or any provision of this chapter. Such a rule will ensure that the Board has authority to deny licensure to someone on grounds that a violation has occurred.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

A Notice of Intended Regulatory Action was published on November 15, 2005 with comment until December 14, 2005. No public comment was received. The Regulation Committee met on March 21, 2006 to draft proposed amendments to the Nursing regulations which were presented to the Board at its meeting on May 16, 2006.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

There is no impact of the proposed regulatory action on the institution of the family and family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
30	n/a	Sets out the fees charged to applicants and licensees	Adds 2 new fees for: 1) issuance of an inactive licensure renewal, set at \$50; and a fee for late renewal of an inactive license at \$15.
n/a	225	n/a	Subsection A provides that a registered nurse or licensed practical nurse who holds a current,

<p>n/a</p>	<p>30</p>	<p>n/a</p> <p>unrestricted license in Virginia may, upon a request on the renewal application and submission of the required fee, be issued an inactive license.</p> <p><i>Since inactive licensure is not an alternative to disciplinary action, it is necessary for the licensee to be in good standing when he or she becomes inactive. Reactivation is predicated on the idea that the licensee was current and active when inactive status was conferred.</i></p> <p>The holder of an inactive license shall not be entitled to practice nursing in Virginia or practice on a multistate licensure privilege but may use the title “registered nurse” or “licensed practical nurse”.</p> <p><i>This provision is necessary to clarify the meaning of inactive licensure, specifically that it does not entitle one to practice – even on a part-time or volunteer basis.</i></p> <p>Subsection B sets out the requirements and conditions for reactivation of an inactive license.</p> <p>To reactivate within one renewal period, a nurse must pay the difference between the inactive renewal and the active renewal fee.</p> <p>To reactive a license that has been inactive for more than one renewal period, a nurse may reactivate by:</p> <ol style="list-style-type: none"> a. Submission of an application; b. Payment of the difference between the inactive renewal and the active renewal fee; and c. Providing evidence of completion of 15 hours of continuing education in nursing approved by a regionally accredited educational institution or professional nursing organization or of passage of National Council Licensing Examination during the period in which the license has been inactive. <p>3. The board may waive all or part of the continuing education requirement for a nurse who holds a current, unrestricted license in another state and who has engaged in active</p>
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		<p>practice during the period the Virginia license was inactive.</p> <p>4. The board may request additional evidence that the nurse is prepared to resume practice in a competent manner.</p> <p>5. The board reserves the right to deny a request for reactivation to any licensee who has been determined to have committed an act in violation of §54.1-3007 of the Code of Virginia or any provision of this chapter.</p> <p><i>If a license has been inactive for more than two years, the Board requires an application that provides information on whether the applicant for reactivation has been actively practicing in another jurisdiction and whether there have been convictions or impairment that may represent a cause for denial of licensure. To ensure that an inactive licensee is safe to resume practice, there is a requirement for continuing education hours or some evidence of competency. The requirements for reactivation are similar to those for reinstatement of a lapsed license, except the application does not require payment of a reinstatement fee.</i></p>
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**Proposed Regulation
Agency Background Document**

Agency name	Boards of Nursing and Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation	18 VAC 90-30
Regulation title	Regulations Governing the Licensure of Nurse Practitioners
Action title	Inactive licensure
Document preparation date	6/22/06

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

Amended regulations were adopted by the Board of Nursing on May 17, 2006 and by the Board of Medicine on June 22, 2006 to propose changes to regulations for nurse practitioners that will specify that a person must hold a current, unrestricted license as a registered nurse to hold a license and practice as a nurse practitioner.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Boards of Nursing and Medicine the authority to promulgate regulations to administer the regulatory system and to issue inactive licenses:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification, licensure or the issuance of a multistate licensure privilege in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify, license or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification, licensure, and the issuance of a multistate licensure privilege.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure or the issuance of a multistate licensure privilege and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such*

regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title.

7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate, license or multistate licensure privilege which such board has authority to issue for causes enumerated in applicable law and regulations. ...

12. To issue inactive licenses or certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of licenses or certificates.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

Amendments are proposed in Section 80 to clarify that in order to hold a license and practice as a nurse practitioner in Virginia, one must hold an active, current license as a registered nurse in Virginia or hold a current multistate licensure privilege as a registered nurse. Nurse practitioner licensure has always been based on the RN license, but since the Board of Nursing is proposing an inactive RN license, Chapter 30 had to be amended to ensure that it was clear that someone could not have an inactive RN license and maintain licensure as a nurse practitioner. Licensure and practice as a nurse practitioner is dependent on the foundational license as a registered nurse, and it is necessary for public health and safety to maintain a current, active license. If the RN license is suspended or revoked by the Boards, the nurse practitioner license is likewise restricted or revoked.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

Amendments to Chapter 30, Regulations Governing the Practice of Nursing will clarify that it is necessary to have a current, active license as a registered nurse in order to practice as a nurse practitioner.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

- 1) There are no disadvantages to the public. Nurses who would request inactive RN licensure would not actively practicing in any setting, so their inactive status would disqualify them from practicing as a nurse practitioner.
- 2) There are no advantages or disadvantages to the agency or the Commonwealth.
- 3) There is no other pertinent matter of interest related to this action.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending notice of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled. There are no additional costs to the agency for implementing inactive licensure.</p>
<p>Projected cost of the regulation on localities</p>	<p>None</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>The individuals that will be affected by this regulation are nurses (RN's) who are retired and no longer practicing but want to retain their Virginia nursing license but give up their licenses as nurse practitioners.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There is no estimate of the number of entities that will be affected but it is highly unlikely that anyone would want an inactive RN license who wishes to retain licensure as a nurse practitioner.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>There are no projected costs of the regulation.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

There are no alternatives other than regulatory action to address the issue of inactive licensure as a registered nurse as it relates to licensure as a nurse practitioner. Non-substantive change to the rules for licensure and practice of nurse practitioners was the only alternative that would clarify the requirements of law and regulation for applicants and licensees.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

A Notice of Intended Regulatory Action was published on November 15, 2005 with comment until December 14, 2005. No public comment was received. The Committee of the Joint Boards of Nursing and Medicine met on April 19, 2006 and voted to recommend the proposed amendments to nurse practitioner regulations to clarify that a current, active license as a registered nurse is necessary for licensure as a LNP.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

There is no impact of the proposed regulatory action on the institution of the family and family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
80	n/a	Sets out qualifications for licensure as a nurse practitioner	Clarifies that in order to be licensed as a nurse practitioner, an applicant must hold a <u>current, active</u> license as a registered nurse. The

			clarification is necessary because the Board of Nursing has proposed inactive licenses be established for registered nurses who are retired and no longer practicing but who want to maintain a Virginia license.
160	n/a	Sets out the conditions by which practice as a nurse practitioner is prohibited	Clarifies that practice as a nurse practitioner is prohibited if the license as a registered nurse is lapse or inactive.